MICHIGAN DEPARTMENT OF COMMUNITY HEALTH
BUREAU OF HEALTH SYSTEMS

Informal Deficiency Resolution for Long-Term Care Facilities

Revised December 2003

Introduction

The Michigan Department of Community Health (MDCH), Bureau of Health Systems (BHS), has established the Informal Deficiency Resolution (IDR) process for the purpose of resolving disputes with Long-Term Care (LTC) facilities over deficiencies cited by survey staff. The survey process brings together a number of competing interests. The Bureau, through its surveyors, is responsible for meeting a large array of survey requirements in a thorough, professional manner. Facilities are interested in being evaluated fairly and consistently by qualified survey personnel. The foremost interest needs to be the resident's right to the highest possible quality of care and life, including the prompt correction of deficiencies that interfere with this right.

This process has been developed with the expectation that all parties act in good faith, treat others with respect and professionalism, and recognize that there will be issues of honest disagreement.

Guiding Principles

1. The Level 2 review process described in this document complies with the Centers for Medicare and Medicaid Services (CMS) minimum requirements for informal dispute resolution at *42CFR488.331* and related CMS *State Operations Manual* instructions. ***The Bureau has supplemented these minimum requirements by adding steps designed to resolve disputes prior to Level 2.***

   NOTE: The Bureau has chosen the term "Informal Deficiency Resolution" rather than the CMS term "Informal Dispute Resolution" to refer to this process in order to clarify that the process is for deficiency disputes as opposed to other survey dispute issues.

2. This process does not alter or delay the required timetables associated with licensure or certification terminations or other adverse actions, including especially the short time frames established for Immediate Jeopardy findings.

3. This informal process does not limit the legal appeals processes that are afforded facilities under state and federal laws or regulations.

4. Facilities may not use the informal deficiency resolution process to delay the formal imposition of remedies or to challenge any other aspect of the survey or enforcement process, including the:

   - Scope and Severity assessments of deficiencies, except scope and severity assessments that constitute substandard quality of care or immediate jeopardy;
   - Remedies imposed by the enforcing agency;

- Alleged failure of surveyors to comply with a requirement of the survey process;
- Alleged inconsistency of surveyors in citing deficiencies among facilities;
- Alleged inadequacy or inaccuracy of the informal deficiency resolution process; or
- Alleged failure to follow the *Principles of Documentation.*

5. Informal Deficiency Reviews are conducted by either BHS staff not associated with the survey or an independent review agent through the Michigan Peer Review Organization (MPRO). Facilities may choose to have BHS conduct the IDR review at no charge, or have MPRO review deficiencies on a fee for service basis to be determined by MPRO. All billing for MPRO reviews will be handled through MPRO separately. Facilities are entitled to select only **one** method of review. **The facility must indicate its selection of review on Form BHS-108. If no selection is made on Form BHS-108, the IDR will be reviewed by BHS.**

6. The IDR review process applies to federal (F tag) citations only.

7. Allegations of surveyor misconduct and rudeness should not be reported under this process, but rather to the Licensing Officer or Survey Monitor for resolution under a separately established procedure.

Objectives

The principal objectives of this informal deficiency resolution process are to:

1. Facilitate resolution of differences throughout the survey process by use of constructive, clear, and ongoing communication.

2. Provide a vehicle to informally and quickly resolve disputes related to survey deficiencies.

3. Promote the mutual exchange of clarifying information that enhances the understanding of survey decisions and minimizes conflicts and disagreements.

The review process depends upon open discussion of concerns and significant issues while surveyors are on-site. It also provides for a means to informally pursue resolution of deficiency disagreements through an independent third party, if requested.

General Process

It is critical that any deficiency disputes be resolved at the earliest possible date. The Bureau is required to issue the final survey report and the enforcement notice within ten (10) working days of the survey exit. Once the survey report and the notice have been issued and formal distribution made, it becomes much more difficult to resolve any conflict regarding deficiencies.

1. During the Entrance Conference

The process begins at the entrance conference when the surveyor(s) explains the survey process and the nature of the information to be gathered during the survey. The surveyor(s) will make it clear during the entrance conference that if a problem arises during the survey

that cannot be settled between the surveyor(s) and facility staff, the surveyor(s) will meet with the facility administrator to discuss the issue(s).

Open communication and information sharing should exist at all times between the facility staff and surveyor(s). The surveyor(s) will request information throughout the process that is needed to make compliance decisions. If the information is available, facility staff must obtain it for the surveyor(s) as quickly as possible to avoid delays in the survey process and the potential for a deficiency citation if the information is not provided.

2. During the Survey

Surveyors will use all information made available to them in making decisions about facility compliance. The information used as evidence to support deficiencies must be fully and properly documented. Facility and survey staff must communicate regularly to ensure that surveyors have access to all relevant information throughout the process. Surveyors are expected to seek information from responsible facility representatives and give the facility a reasonable opportunity to provide additional information before compliance decisions are made and deficiencies are written. The facility's responsibility is to provide the requested information in a timely manner, normally no later than the day previous to the scheduled exit conference.

Surveyors are expected to hold at least one briefing session or status meeting with key facility staff during the course of the survey. These meetings should include observations, including ***potentially*** significant issues that may be known at that time and might result in deficiencies; responses to provider questions and provide the opportunity for requesting or having the facility supply additional information.

If issues arise during the survey that the surveyor(s) and facility staff cannot resolve, the surveyor(s) and the facility's administrator should meet and attempt to overcome any misunderstanding or miscommunication. This meeting may include other facility staff as necessary. If the surveyor(s) or the facility's administrator continues to be concerned about the issue, the Survey Monitor or Licensing Officer responsible for the survey should be immediately contacted to discuss the matter further and arrive at a resolution, if possible.

3. During the Exit Conference

During the exit conference, the surveyor(s) will communicate to facility staff all ***potential*** citations along with their tentative scope and severity grid levels. The general basis for each citation will be provided, as well as specific examples. Due to the time constraints, all examples may not be given. Opportunity will be provided for the facility staff to provide further information on any deficiencies ***not previously discussed*****,** if they are disputed. The surveyor(s) will give appropriate consideration to any additional ***timely*** information in determining the facility's compliance with requirements. Such information must typically be submitted within one (1) working day of the exit conference in order to be considered in preparing the survey report.

Attendees at the exit conference normally include the surveyor(s) and facility staff selected by the administrator. Additionally, one or two residents, an officer from the Resident Council, and a representative of the LTC Ombudsman are invited. Because of the informal nature of the exit conference and the ***preliminary*** nature of the deficiencies discussed, facility

attorneys are not expected to be present at the conference. The exit conference is not intended to be a preliminary hearing on the merits of deficiency citations. Any independent consultants engaged by the facility for assistance may attend the exit conference as observers.

In accordance with CMS protocol, the Bureau may cancel or abort the exit conference if the facility creates an environment that is hostile or inconsistent with the informal and preliminary nature of an exit conference. In such cases, a subsequent exit conference may be conducted at the discretion of the Bureau.

4. Level 1 Review After the Exit Conference

Additional information that the facility believes will demonstrate compliance with the tentative deficiencies identified at the exit conference must be submitted to the Licensing Officer typically within one working day of the exit conference as noted in Number (3) above. This short time frame is based on the fact that surveyors begin preparing the formal survey report on the working day following the exit conference. The Survey Monitor will normally be involved in review of such additional information and will confer with the Licensing Officer on any disputed areas prior to the formal issuance of the survey report by the Licensing Officer. The Licensing Officer may choose to note any comments on disputed areas in the letter transmitting the report.

Level 2 reviews are accepted for federal (F tag) deficiencies only. The facility may request that the Licensing Officer review any state (M tag) deficiencies at Level 1.

The Bureau is required by CMS to issue the survey reports within ten (10) calendar days of the exit conference date. This time frame is shortened to three workdays for immediate jeopardy cases.

5. Level 2 Review After the Survey Report is Issued

If disputes regarding federal (F tag) deficiencies have not been resolved after the above opportunities have been provided or if disagreement arises or continues after the facility receives the formal written survey report, the facility may request a Level 2 review of the involved F tag deficiencies. The facility must complete an *Informal Deficiency Resolution Request (IDR)–Level 2* (BHS-108) listing each disputed deficiency. The IDR request must be received within the same ten (10) calendar day time frame the facility has for the submission of the PoC.

The burden is on the facility to explain submission of any evidence that was not in existence at the time of the survey. If these documents were not presented to the surveyor(s) at the time of survey, the facility should explain why they were not provided in Item 4 of the Level 2 form. The facility should **consecutively number attachments** and refer to them on the BHS-108 form to ensure that the reviewer has the complete request. The BHS Enforcement Unit will log the request for tracking purposes and forward it within two (2) workdays of receipt to the reviewer.

The original IDR request must be submitted to the Enforcement Unit along with relevant documentation supporting the IDR to the following address:

MDCH, BHS, Operations
Enforcement Unit, IDR Requests
P.O. Box 30664
Lansing, MI 48909

The original PoC is to be submitted to the Licensing Officer that signed the CMS-2567L. The facility may state at the beginning of the PoC that it disputes the citation(s) and has filed an IDR request. However, the details of the reasons why the facility disputes a deficiency should be confined to the *Informal Deficiency Resolution Request (IDR)–Level 2* form. It is inappropriate to detail reasons for a disputed deficiency in the PoC.

6. Level 2 Review

A trained reviewer will make a determination whether the deficiency cited is supported, amended or deleted. The reviews by our staff may be done by someone other than a nurse; e.g., social worker, pharmacist. Since there is only one informal review opportunity, it is important that the facility submit complete and relevant information with its request. Submission of large volumes of overly-detailed, redundant, or irrelevant material will hamper the review process.

In rare situations and at the reviewer's discretion, the reviewer may call the facility for further information or, in rare cases, conduct an in-person meeting with a facility representative and a representative from the State Agency. This contact is at the sole discretion of the reviewer and must be initiated by the reviewer. The reviewer's decision is final and no requests for resubmission of additional evidence or review by other Bureau or MDCH staff will be accepted. CMS may overrule the reviewer's decision.

The decision of the reviewer will be noted on the request form(s) and returned to the Enforcement Unit within 20 calendar days of receipt by the reviewer. For each F tag, the reviewer will record the IDR decision using the code numbers on the BHS-108 form. Explanations of the code numbers shown on the form are attached. The reviewer may not increase the scope and severity of a deficiency or cite additional F tags based on evidence contained in existing tags.

7. Bureau Processing of Results

The Enforcement Unit will forward the decision to the facility within two (2) workdays of receipt from the reviewer. These results may be transmitted by telephone to the designated facility contact person.

If the Level 2 review results in a decision to amend or delete a deficiency, the following steps will be taken:

- If the deficiency is deleted, the deficiency citation will be electronically deleted from the Bureau and CMS data systems. Any enforcement action(s) imposed solely because of that deficiency citation will be rescinded.

- If the deficiency is to be amended (but still cited), the deficiency will be electronically revised. Any enforcement action(s) imposed will be reviewed for continued applicability.
- When the Licensing Officer is notified of citation changes secondary to the review, the indicated changes will be made and initialed on the releasable copy.
- The Licensing Officer will review state M tags related to any F tags which are amended or deleted, determine any necessary amendments or deletions, and revise the survey report as needed.

The provider has the option to request a "clean" (new) copy of the survey report. However, the clean copy will be the releasable copy only when a "clean" (new) PoC is both provided and signed by the provider. The original survey report is disclosable when a clean PoC is not submitted and signed by the provider.

In either case, any CMS-2567L and/or PoC that is revised or changed as a result of informal dispute resolution, must be disclosed to the Ombudsman and other parties as required by law.

8. Facility Eligibility for a Revisit IDR Review

The following table indicates when a facility is eligible for an IDR review on a revisit citation.

Results of Revisit IDR	Eligibility for Another IDR
Continuation of same deficiency at revisit	Yes
New deficiency (i.e., new or changed facts, new tag), at revisits or as a result of IDR	Yes
New example of deficiency (i.e., new facts, same tag) at revisit or as a result of IDR	Yes
Different tag but same facts at revisit or as a result of IDR.	No, unless the new tag constitutes Substandard Quality of Care

NOTE: A facility cannot request an IDR review of a deficiency cited at an initial standard or abbreviated survey, with its request for review of a revisit citation.

Michigan Department of Community Health
Bureau of Health Systems
Informal Deficiency Resolution (IDR) Codes

Supported in full. *The citation is **supported in full**, with no changes in the language, no deletion of the examples, and no change in the scope and/or severity.*

Amended. *The citation is **amended**, through any change in the language, deletion of one or more of the examples, decrease in the scope and/or severity, or by moving the deficient practice to a different citation (F-tag).*

Deleted. *The citation is **deleted**, through the deletion of the entire tag, not just specific examples or changing of specific language.*

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01 – Information did not negate deficient practice.
- The information presented by the facility didn't cause you to alter the citation at all, thus the citation is supported in full.

02 – Negative resident outcome avoidable.
- The issue of "avoidable vs. unavoidable", with the facility unable to prove the negative resident outcome was unavoidable, thus the citation is supported in full.

03 – Other reason supported.
- Any other reason that the citation was supported in full.

04 – Scope not supported.
- Amending the citation, through a decrease in the scope.

05 – Severity not supported.
- Amending the citation, through a decrease in the severity.

06 – Insufficient evidence to support finding.
- Amending the citation, by deleting an example or specific language. However scope and severity remains the same.

07 – Deficient practice at wrong tag.
- Amending the citation by moving the entire F-tag to a different F-tag.

08 – Other reason amended.
- Any other reason that the citation was amended (changed), but not deleted.

09 – No deficient entity practice at tag.
- The F-tag is deleted because the citation written did not contain a supportable deficient entity practice.

10 – Negative resident outcome unavoidable.
- The issue of "avoidable vs. unavoidable", with the facility able to prove that the negative resident outcome was unavoidable, thus deleting the citation. (Note: the avoidable/unavoidable issue is not a consideration when reviewing F223 [Abuse]).

11 – Other reason deleted.
- Any other reason that the citation was deleted.